

## **Wind and Prairie Task Force Minutes, April 16, 2004**

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The 6<sup>th</sup> meeting of the Wind and the Prairie Task Force was called to order at 10:15 a.m. on Friday, April 16, 2004, in the Kansas Corporation Commission, 1500 SW Arrowhead, Topeka, Kansas, by Jerry Karr and Jerry Lonergan, Co-Chairs.

### **Present:**

Rose Bacon	rancher
Claude Blevins	county zoning administrator
Sheila Frahm	Natural Resource Legacy Alliance
Jan Jantzen	tourism
Jerry Karr	farmer
Jerry Lonergan	Kansas Inc
Alan Phipps	county commissioner
Alan Pollom	Nature Conservancy
Richard Porter	rancher
Scott Ritchie	rancher, businessman
Richard Seaton	Audubon of Kansas
Jennifer States	JW Prairie Windpower
Don Stephens	rancher
Joseph Stout	rancher
John Strickler	Natural Resource Legacy Alliance
Monty Wedel	county planner
David Yearout	planning consultant

### **Technical advisory group - Ex officio members**

Niki Christopher	attorney
Ward Jewell	professor of electrical engineering at WSU
Ed Martinko	State Biologist
Robert Robel	professor emeritus of biology at KSU

### **Staff**

Liz Brosius	SERCC chief of staff, Kansas Geological Survey
Melany Miller	Task force secretary, Kansas Geological Survey
Scott White	Kansas Geological Survey

### **Special Guest**

Les Evans	SERCC Liaison
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## **Welcome and Announcements**

Jerry Karr announced the two public forum dates and asked members to mark their calendars: April 28 in Manhattan, Manhattan Fire Dept. Headquarters; April 29 in El Dorado at Butler County Community College. The forum locations were chosen to cover the northern and southern parts of the Flint Hills.

Karr said that Ted Eubanks will be able to meet with task force on May 11 to present his report on tourism in the Flint Hills. Meeting will be 10:00 to 3:30, at the Kansas Technology building (same location as last meeting). Task force will need to find another date in May to meet and finalize report to Governor.

Karr also mentioned that the news release about the public forums was being sent out and that we hoped to get the word out in counties that have not had the opportunity to participate. Please pass the word as you can to get the information out about the public forums.

## **Committee Reports, Review of Draft Documents**

### **Land Leases**

Karr introduced Richard Porter to discuss the latest version of the draft land lease guidelines, saying he hoped by the end of the discussion, the land lease guidelines would be ready for the public forums. He noted that Jennifer States had submitted some comments from the wind developer's perspective and this amended document was circulated to task force.

Richard Porter invited State's to explain her comments. States noted that it would be good if the tone of the opening paragraph didn't suggest that wind developers were out to get landowners.

With respect to her second comment, States said that the layout of turbines could not be determined until all landowners have been signed up, so it is difficult to tell the landowners at the outset exactly how many turbines and where they will be located. Wind developers try to be flexible and work with landowners on how much land is subject to the lease agreement.

With respect to length of lease, States said contracts are usually binding for 20 years or more. Once construction begins and turbines are placed, the contract is binding due to the money that the wind companies have spent to that point.

Scott Ritchie asked what happens if a development gets interrupted for financial reasons, the developers leave and there is nobody to help take down the turbine? States said because the turbines are so valuable, they wouldn't be abandoned (the steel alone is worth a lot as scrap metal). Ritchie said he didn't believe this, because of what he has seen happen with oil and gas leases. States noted that the lease contracts are binding, so the developers have to follow through. Les Evans added that the rights are assignable, if there is some kind of decommissioning process, there should be something there. Niki

Christopher noted that this issue might be best addressed by the Legislature, rather than in the contract.

Porter stated that it was important to have the landowner on notice as they will have to look at the tower and may incur some expenses if they need to remove the towers, as many might not think about what might happen down the road. Evans said we didn't give the landowners enough credit for what they do know. Porter said that 85% of landowners signed the first lease with maybe a few add in items.

Following some more discussion of the decommissioning issue, it was agreed that it was an important consideration for landowners that may need to be considered by vehicles other than the land lease.

Task force discussed how best to incorporate State's comments into the land lease document that will be presented at public forum. Some felt that the current format with comments underlined might work. Sheila Frahm noted that they were not trying to put together *the* document, just a list of guidelines to give us something to work off of. The exact wording won't be as vital. Rose Bacon agreed that guidelines need to be stated, so that people looking at it can have information they need before going forward. John Strickler asked whether what we have is sufficient to go to the public? Karr noted that they had received some more comments since land lease guidelines were first presented and needed to incorporate them. Evans suggested the document list issues of both sides. Seaton said it didn't make sense to speak for the wind industry as they already have their land lease agreements in place. States said the developers encourage landowners to use caution when entering into a contract. Perhaps there is a need for a softening of language on the guidelines so this can be presentable to the landowners.

Alan Pollom had a question for States about land that is covered by the lease agreement but is not needed for the wind farm: would this imply that after you have the layout of the turbines, the landowner would have that other land released back to them? States said that if the land is not needed for lines, or roads to get to the turbines, then yes, they would release that land used in the initial lease contract.

Niki Christopher suggested that it might be educational to have a panel discussion of these kinds of issues at the public forums.

Some discussion of whether land leased for wind development would be restricted for other uses. In general, hunting or farming is not restricted, but building of structures that might impede wind would not be permitted under terms of lease. States noted that her company has guidelines that land is posted "no hunting without permission" and landowners keep a log of who hunts, so if there is damage done to the turbine, the landowner is not liable for damages.

Ritchie says he'd like to see an actual lease from a wind developer. Porter arranges to have copies made and distributed later at meeting. Yearout offers to scan sample leases as PDFs and send to Liz Brosius for circulation to task force.

### ***Land Trusts***

Karr mentions the new land trust, Kansas Park Trust, that's being developed for the Z-Bar Ranch, noting that this may use up a lot of the money available for land trusts and purchase of conservation easements.

Joe Stout noted that the land trust summary document did not address the need for funding. We need the legislature to find funding.

Karr suggested that it would be good to include an example of what a landowner would receive in an easement deal. For example, if you entered into this with 20 years or 30 years with set amount of acres, what would their money be? Bacon wondered if the details were too complex to boil down into an example.

### ***Siting Guidelines***

Monty Wedel distributed revised version of the draft Siting Guidelines. Yearout noted that moratoriums are available to both zoned and unzoned areas; this gives a "time out" to iron out some issues.

Wedel noted that if the state is given control over the siting of wind farms, they could tell the counties that they *will* allow wind. It could go either way.

Karr noted that the guidelines were in response to our general charge to help counties in their decision-making process related to siting of wind farms. Wedel agreed that these are areas that other counties are addressing and counties should look at these guidelines.

Claude Blevins said it was important to view siting as regional versus county by county when talking about the Flint Hills. He asked if a regional planning commission could limit the zoning? Yearout said that it could, but it would be hard to defend zoning that prohibited only wind development but not other industry. General discussion of regional planning issues and whether to add language to siting guidelines on this.

John Strickler raised the question again about the unzoned counties and what options they have to limit development. What is the authority of county commissions to make land-use decisions? General discussion of whether we needed to get an expert legal opinion on this, perhaps even ask the Attorney General. Karr noted that any request to the Attorney General would need to be carefully phrased.

Jerry Karr: The alternative is to ask the legislature for a zoning committee that would have super powers of authority. The final decision would still be up to the local authorities to deny or approve. Framing of the document is very important.

**Break for lunch at 12:10.**

**Reconvene at 12:50**

**Review of Options 1-5 Draft Document**

Karr announced that instead of having a KCC representative talk about Option 3, they had a handout on KCC's current oil and gas "siting" regulations, prepared by Maurice Korphage, Director of Conservation, KCC.

Jan Jantzen raised the question of whether it was necessarily bad that the state was importing energy.

Brosius noted that the state energy council had addressed that very issue last year and had come up with an additional goal to ensure that Kansans had low cost, affordable, and sustainable energy, produced within the state wherever possible.

Christopher noted that we have the capacity to produce 26% over capacity in electricity alone. This can generate money coming in, which is important to a lot of people.

Karr returned to the discussion of options 1-5, noting that Lee Allison had presented another option at the last meeting that had to do with abatements and property tax issues. Karr noted that exemption can't be partial.

### ***Option 1***

Jerry Lonergan passed out a draft summary of Options 1-5 and summarized the provisions of Option 1. Another version of Option 1, the Kansas Heritage Area Option, prepared by Rose Bacon and Jan Jantzen, was also distributed and discussed.

Jantzen noted that they tried to incorporate elements of other options into this to make a workable deal. Bacon pointed out the map showing the outline of the area (13 counties) and locations of proposed wind-energy development and areas where landowners have been approached for leases.

Karr noted that this does not address the small-scale projects in the municipalities.

Evans raised a question about the heritage area option prohibiting all industrial development within this area? Seaton noted that the language said to "limit" intrusive development.

Task force discussed the kinds of development the heritage area option would limit. Don Stephens asked, does this mean ban all new housing development? Does this mean prohibiting all new development? Bacon said, no, it says limiting. Seaton said, our context is on the development of wind towers, not to look at or limit development of housing or other industry. Blevins said, we have to look at both.

Frahm raised the question of how such a prohibition or limitation would be viewed by developers, whether it would have a chilling effect on economic development in general? Jantzen said that both sides should be represented and the task force wouldn't just legislate a final decision. Frahm asked if this option was just for the Flint Hills or was it a broader proposal? Jantzen answered, right now we are looking at the Flint Hills, but I hope that we can use a version of this in other areas.

States voiced concern about one group of landowners limiting what other landowners can do with their land, saying that under this option, there will be no wind development in the Tall Grass Prairie at all. Jantzen said yes, that is what we are proposing. Christopher said that this didn't appear to fit with our charge.

Karr asked the task force to think about the impact of this option on local government control, saying that it totally diminishes local control. Bacon said, it depends on how it is defined or put into place. Yearout said that the heritage option would require legislative control and diminish local control.

Ritchie said that the two-year moratorium gives us the timeframe to work out the snags.

Strickler said he didn't see this as a recommendation, just as an option. Wedel noted that the concept has to be practical.

Karr raised the question of whether we need to limit more than wind development, if we want to preserve the tallgrass prairie (for example, current cultural practices).

Jantzen said this is not maximum preservation, and Karr responded that, given the number of counties involved, this is probably the strongest or maximum preservation proposal.

Yearout noted that the debate about this option fits in charge #1. This may be the most aggressive; landowner property rights issues comes back into play here.

Seaton pointed to the second implementation strategy, saying it attempts to address the limitations on wind energy in the Flint Hills by expanding transmission capacity in other parts of the state.

Karr reminded them that the energy council had another task force working on the state's electrical transmission issues.

Alan Phipps referred to task force charge #2 and said that this option says no local involvement in siting. Bacon said that's not what it is saying. Phipps asked her how it addresses local authority? Bacon said the development of a legislative authority that would oversee all these things. Jantzen said the problem is in the wording: voluntary oversight that leaves it up to local control.

States pointed out that Westar has issued an RPS for windpower and suggested this proposal eliminates any possibility of going forward with that. Pollom said he disagreed.

Strickler said, Jan, I don't think changing the wording will help you accomplish what you want as a result. If this option is here to protect the Flint Hills, leave it alone and go to another option.

Bacon said do we choose a spot in Flint Hills and mark it off, or do we preserve the Flint Hills?

Christopher said, If you are going to protect the area, it has to include everything, not just one item like wind. Human activities have fragmented the hills long before wind power was brought into this. Be frank and up front. Say what you mean. I don't feel one rancher should have last word for all ranchers.

Strickler noted that it seemed like Christopher described Option 2. Wedel said this is a valuable discussion.

Bacon said this option is to preserve or maintain the Flint Hills as well as we can and limit any further intrusion.

Karr asked the task force if they were agreed to have this as an option available to the public? This is the maximum promotion against wind.

### ***Option 2***

Lonergan summarized Option 2, noting that it was based in part on some of the questions Ted Eubanks raised: what lands need to be off limits, how many, do they need a buffer zone?

Karr noted that there are large segments within the Flint Hills that are not classified as untilled. The area you are trying to preserve is the tallgrass prairie. This would be first focus. Then look at specialty areas like Z-Bar Ranch and Konza Prairie. Buffer the important areas including scenic byways. This might identify areas that are important for wildlife and parks.

Wedel said he had a lot of concerns over this option. Eubanks' presentation was on tourism. So the preservation issues are only for the tourism aspects. The word prohibit is in the wording. How are we going to prohibit anything?

Lonergan said it wasn't just a tourism decision, these areas are already here so we know that they would be set off (Z-Bar, Konza).

Karr said the buffer occurs other places, but most of this would make the Flint Hills attractive to a visitor. Lonergan said the buffer is for specific areas like the Konza, Z-Bar, scenic byways

Seaton asked if this option essentially prohibits development in Konza, Z-Bar, etc., but opens up the other areas?

Ed Martinko said he didn't think the task force could develop a one-size-fits-all recommendation in the time frame we have. Karr responded that we will put our recommendations together and send to the Governor, who then decides what can be incorporated.

Bob Robel noted that some areas in the Flint Hills are no longer considered pristine, and some areas need some sort of restriction on development. Perhaps we need to ask for a moratorium to identify areas of class 1, 2, or 3 for development or preservation. We are close to providing this data for threatened and endangered species statewide (KBS and K-State will release data in June).

Pollom asked how much they should refer back to the original write-up (the version of Option 2 that was distributed at previous meeting)? For example, what is the buffer zone—5 or 7 miles?

Karr said the 7-mile buffer zone was suggested based on some information found on the internet, but nothing is set.

Task force then had a general discussion about the implications of prohibiting wind development in this option. Pollom pointed out that it raised some of the same issues discussed with respect to Option 1. If you prohibit, then it is not a guideline. Strickler concurred, if you go with the prohibition in Option 2, you have the same things as Option 1. You may have the conservation easements. I see a lot of difficulties, based on viewshed and buffers.

States said she thought the language in earlier draft was good, regarding viewshed designation being based on and applying only to vistas that are currently free of man-made visual intrusion. Takes into consideration what is already affecting impact now. Christopher noted that I-70 is not pretty; it's the largest manmade structure through this area.

Ed Martinko said that Option 2 might need some revision to clarify the environment bases for preservation from the viewscape/aesthetic ones. Robel concurred and said he would work up some comments to clarify criteria for categorizing areas for protection based on species diversity, degree of habitat fragmentation, viewscape, presence of endangered or rare plants and animals and get these to Brosius.

Robel said he thought it was worthwhile to propose Option 2.

Yearout noted that the only way to make it stick is if the legislature approves it at the state level.

### **Planning for Public Hearings**

Because the discussion of options was running long, Karr asked the task force to look at the public hearings and get back to options 3-5 later.

Karr said they wanted an approach that allows us to present our ideas and allows the public a chance to give input and ask questions. We don't know who the visitors will be, but we don't want to focus on only one issue. He suggested that we might have a number of booths, like poster sessions, where task force members can sit and talk to the public



about specific topics and keep a list of comments to review later as a group. It is important that we hear from the people.

Strickler suggested it would be good to have a 15-20 minute overview at the beginning to give people background information, on what it takes to adopt any of the options.

Lonergan said he'd try to make a one-page summary of each option so they can see these and decide which tables they wish to visit.

States said it should be clear that this is just a draft of the options and note the political side involved too. Jantzen said he agreed with an overview, but objected to including political reality.

Bacon said she thought the table idea was fine, but commented that the task force has had 7 wind and energy presenters, 5 of which have been solidly pro-wind, and that it seemed odd that they had not had one single prairie land management, range management, or specialist to present to us. She said she asked for several presenters, including the Tallgrass Ranchers but was told, just after listening to the FPL video, that they were too biased, but they could present at a hearing. She said it looked like they would never present, and she had a real problem with that. Said she felt it was very pro-wind that task force hadn't heard from the prairie preservationists or someone from Konza or economic people who could refute economics or, basically, anyone who has voiced publicly that this is not a good idea. Said she felt this was a lopsided presentation.

Karr commented that he knew Bacon was not happy.

Michael Stubbs, from the audience, spoke up, saying they were being shut out. Karr: suggested Stubbs was losing credibility by speaking out in this way. Stubbs replied that they were being shut out of the discussions, said they were told all along that they would have the opportunity to speak at a public hearing and now this was being denied. You are not letting us have a voice, so he has to speak out.

Karr responded to Bacon's statement about presentations, noting that they'd had a geohydrologist talk about impact on groundwater, the tourism presentation, presentations from two of our task force technical advisors on wildlife and bird issues, presentations on land leases and visual impacts that were definitely not pro-wind. We have tried to get a prairie expert from the Konza at past meetings and are working on getting a prairie presenter for the May 11<sup>th</sup> meeting. The list has actually weighed heavier in the side of the preservation.

Christopher asked if we are going to breaking up into little groups, are we going to be sitting at the tables selling our own individual views or are we working as a task force to share with the public and get more views.

Karr said he believed people with different opinions could sit at a table and bring back a fair report to the task force.

Yearout pointed out that they needed to have workable draft of the options ready for the public forums.

Frahm suggested that instead of having 5 tables, one for each option, it might be good to have several tables to discuss all the options. This would be less confusing to the public. Task force agreed that this was a better approach.

Jantzen said they could let the public know that they needed to present their questions or suggestions by the following Monday so that the Task Force can discuss these.

Yearout said it needed to made clear to the public that these were not traditional hearings. Also whether we would be holding hearings later in the process.

Wedel said he liked the idea of giving a one page list of the options to the public and suggested also having description of the areas that would be set off based on viewshed, etc. Tourism should be included.

Some discussion of what maps would be displayed or available as handouts. General consensus to display the Ecoregions, untilled areas, and wind potential map, and possibly map of proposed wind-energy development in Flint Hills.

Robel suggesting having self-addressed, stamped envelopes with instruction to have it back by certain date, with a list of the options and a short paragraph explaining each option.

Pollom suggested having check boxes for each option with a line or two at the bottom for comments.

Karr asked whether they wanted to have wrap-up reports from the tables at the end of the forums?

Strickler referred back to the list of assumptions discussed in March and asked whether there were any assumptions we can agree on that could be included in final report?

Blevins said they needed to have some public input first.

Pollom asked whether they could get more instruction from the Governor about whether there is an expectation that there will be some wind farms developed in the Flint Hills? Wedel said he thought Lee Allison had said it was up to our interpretation.

Jantzen said he didn't think the timeline was sufficient for this task force to do a proper job.

Yearout said it was a mistake to assume they can make a decision on all these issues. They may need to explain to the Governor that these items need further discussion.

Things that are easy to implement will be set up, then things that are possible, and then identify those that need further work.

Evans commented that it might make sense to consider the flipside of Option 1. If they're going to wall off an area and protect it, no matter what, then maybe should set off another area that will be developed, no matter what.

Frahm noted that preservation has been the focus, but economic growth is also one of our charges. Not exactly in our charge, but we must be careful how we say things so that we are not shutting out all industry in the future.

Robel asked, on the subject of economic development of state, how the development or non-development affects the state economically! If we don't do this or we do this, what will this do for the state.

Wedel said that he wasn't sure, with the property tax exemption, what the benefit to the state was.

It was pointed out that there was an FPL representative in the audience, and Mark Bruce was asked to give an overview of the economic impacts of the Gray County wind farm.

As task force prepared to adjourn, Brosius reminded them that she and the co-chairs would get draft documents ready and distributed to the task force by end of next week and they'd need to be reviewed and returned to her by Monday, the 26<sup>th</sup>, in order to get then ready for public forums.

**Adjournment:**

Meeting adjourned at 3:50 pm on Friday, April 16, 2004. The next meeting will be May 11 at a location to be announced, 10 am to 3:30 pm. April 28 and 29 will be public forums in Manhattan and El Dorado.

**Minutes submitted by:** Melany Miller, WPTF Secretary

**Minutes approved by:**

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